

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| DEBORAH PARKER, <i>et al.</i>, |) | CASE NO. 5:07CV3652 |
| |) | |
| PLAINTIFF, |) | JUDGE PETER C. ECONOMUS |
| |) | |
| V. |) | |
| |) | |
| OHIO DEPT. OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES, |) | MEMORANDUM OPINION AND ORDER |
| |) | |
| DEFENDANTS. |) | |
| |) | |

This matter is before the Court upon Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim. (Dkt. # 5).

On December 5, 2007, this Court issued an order assigning this case to Magistrate Judge George J. Limbert for general pre-trial supervision (Dkt. # 4). On June 10, 2008, the Magistrate issued a Report and Recommendation, recommending that the Court **GRANT** Defendant's Motion to Dismiss and enter judgment in favor of Defendant. (Dkt. # 14). The Magistrate Judge's recommendation was based upon a finding that Plaintiffs' claims are barred by the Eleventh Amendment. Additionally, the Magistrate Judge recommends dismissal because Plaintiffs have failed to exhaust available administrative remedies.

Plaintiffs timely filed objections to the Magistrate's R&R. (Dkt. # 18). Specifically, Plaintiffs argue that their claims are not barred by the Eleventh

Amendment's grant of sovereign immunity to the states because, according to Plaintiffs, Congress has abrogated the states' immunity with regard to suits brought pursuant to 42 U.S.C. § 1983. (Dkt. # 18 at 2).

Plaintiffs' argument is unavailing. The Supreme Court has explicitly held that the Eleventh Amendment precludes states from being subject to suit under § 1983, and that Congress has not abrogated such immunity. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Therefore, the Court agrees with the Magistrate Judge's determination that Plaintiffs' claims brought pursuant to § 1983 are barred by the Eleventh Amendment. Accordingly, the Court finds that Plaintiffs' objections are without merit.

The Court has reviewed the report and recommendation of the Magistrate Judge *de novo*, and finds that it is well-supported.

Therefore, Magistrate Judge Limbert's report and recommendation is hereby **ADOPTED**. (Dkt. #14). Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim is hereby **GRANTED**. (Dkt. # 5).

IT IS SO ORDERED.

/s/ Peter C. Economus – September 17, 2008
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE